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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 OLD REPUBLIC GENERAL INSURANCE) 1:20-CV-00778-NONE-JLT
11 CORPORATION,)
12 Plaintiff,) SCHEDULING ORDER¹ (Fed. R. Civ. P. 16)
13 v.)
14 AMTRUST NORTH AMERICA, et al.,) Pleading Amendment Deadline: 1/19/2021
15 Defendants.)
16 _____) Discovery Deadlines:
) Initial Disclosures: 12/18/2020
) Non-Expert: 4/30/2021
) Expert: 8/31/2021
) Mid-Discovery Status Conference:
) 1/25/2021 at 8:30 a.m.

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18 Non-Dispositive Motion Deadlines:
19 Filing: 9/7/2021
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21 Dispositive Motion Deadlines:
22 Filing: 10/12/2021
23 Hearing: 11/16/2021
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25 Settlement Conference: 4/19/2021, 9:00 a.m.

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28 Pre-Trial Conference:
29 3/14/2022 at 8:30 a.m.
30 Courtroom 4

I. **Magistrate Judge Consent: Notice of Congested Docket and Court Policy of Trailing**

¹ Because of this Court's General Order 612 and because the Court finds the joint report adequately sets forth the information for the scheduling order, the scheduling conference is VACATED.

1 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
2 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a
3 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case
4 set on the same date until a courtroom becomes available. The trial date will not be reset.

5 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
6 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
7 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
8 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
9 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
10 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

11 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
12 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
13 Local Rules, Appendix A, such reassessments will be random, and the parties will receive no advance
14 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
15 District of California.

16 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
17 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
18 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
19 whether they will consent to the jurisdiction of the Magistrate Judge.

20 **II. Pleading Amendment Deadline**

21 Any requested pleading amendments are ordered to be filed, either through a stipulation or
22 motion to amend, no later than **January 19, 2021**.

23 **III. Discovery Plan and Cut-Off Date**

24 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
25 on or before **December 18, 2020**.

26 The parties are ordered to complete all discovery pertaining to non-experts on or before **April**
27 **30, 2021** and all discovery pertaining to experts on or before **August 31, 2021**.

28 The parties are directed to disclose all expert witnesses, in writing, on or before **May 28, 2021**,

1 and to disclose all rebuttal experts on or before **July 15, 2021**. The written designation of retained and
2 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
3 **shall include all information required thereunder**. Failure to designate experts in compliance with
4 this order may result in the Court excluding the testimony or other evidence offered through such
5 experts that are not disclosed pursuant to this order.

6 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
7 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
8 included in the designation. Failure to comply will result in the imposition of sanctions, which may
9 include striking the expert designation and preclusion of expert testimony.

10 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
11 disclosures and responses to discovery requests will be strictly enforced.

12 A mid-discovery status conference is scheduled for **January 25, 2021** at 8:30 a.m. before the
13 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
14 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
15 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
16 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
17 completed as well as any impediments to completing the discovery within the deadlines set forth in this
18 order. **Counsel SHALL discuss settlement and certify that they have done so.** Counsel may appear
19 via teleconference by dialing (888) 557-8511 and entering Access Code 1652736, provided the
20 Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the intent to appear
21 telephonically no later than five court days before the noticed hearing date.

22 **IV. Pre-Trial Motion Schedule**

23 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
24 than **September 7, 2021**² and heard on or before **October 5, 2021**. Non-dispositive motions are heard
25 before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States
26 Courthouse in Bakersfield, California.

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29 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of
discovery of the dispute, but not later than 30 days after the expiration of the non-expert discovery deadline.

1 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
2 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
3 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
4 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
5 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
6 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
7 obligation of the moving party to arrange and originate the conference call to the court. To schedule
8 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
9 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
10 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
11 **from the Court's calendar.**

12 Counsel may appear and argue non-dispositive motions via teleconference by dialing (888) 557-
13 8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk
14 receives a written notice of the intent to appear telephonically no later than five court days before the
15 noticed hearing date.

16 All dispositive pre-trial motions shall be filed no later than **October 12, 2021** and heard no later
17 than **November 16, 2021**, in Courtroom 4 at 8:30 a.m. In scheduling such motions, **counsel shall**
18 **comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.**

19 **V. Motions for Summary Judgment or Summary Adjudication**

20 **At least 21 days before** filing a motion for summary judgment or motion for summary
21 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
22 to be raised in the motion.

23 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
24 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
25 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
26 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
27 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

28 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed

1 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
2 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
3 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
4 statement of undisputed facts.

5 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
6 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
7 **comply may result in the motion being stricken.**

8 **VI. Pre-Trial Conference Date**

9 **March 14, 2022** at 8:30 a.m. in Courtroom 4.

10 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2)**.
11 The parties are further directed to submit a digital copy of their pretrial statement in Word format by
12 email at noneorders@caed.uscourts.gov.

13 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
14 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
15 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
16 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
17 Court to explain the nature of the case to the jury during voir dire.

18 **VII. Settlement Conference**

19 The Court sets a settlement conference on **April 19, 2021** at 9:00 a.m., located at 510 19th
20 Street, Bakersfield, California.

21 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case**
22 **shall appear** at the Settlement Conference **with the parties** and the person or persons having **full**
23 **authority** to negotiate and settle the case **on any reasonable terms**³ discussed at the conference.
24 Consideration of settlement is a serious matter that requires preparation prior to the settlement
25 conference. Set forth below are the procedures the Court will employ, absent good cause, in

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³ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
28 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like
may be represented by a person whose recommendations about settlement are relied upon by the ultimate
decision makers.

1 conducting the conference.

2 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
3 fax or e-mail, a written itemization of damages and a meaningful⁴ settlement demand which includes a
4 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
5 settlement conference, Defendant **SHALL** respond via fax or e-mail, with an acceptance of the offer or
6 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
7 appropriate. **The parties SHALL continue to exchange counteroffers until it is no longer**
productive.

8 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to
9 their Confidential Settlement Conference Statement, as described below. Copies of these documents
10 shall not be filed on the court docket.

11 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

12 **At least five court days before** the settlement conference, the parties shall submit, directly to
13 Judge Thurston's chambers by e-mail to JLTOOrders@caed.uscourts.gov, a Confidential Settlement
14 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
15 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
16 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
17 Settlement Conference indicated prominently thereon.

18 The Confidential Settlement Conference Statement shall include the following:

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20 A. A brief statement of the facts of the case.

21 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
22 which the claims are founded; a forthright evaluation of the parties' likelihood of
23 prevailing on the claims and defenses; and a description of the major issues in dispute.

24 C. A summary of the proceedings to date.

25 D. An estimate of the cost and time to be expended for further discovery, pretrial and

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28 ⁴ "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the offering party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party. If, however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this should trigger a recognition the case is not in a settlement posture and the parties should confer about continuing the settlement conference via stipulation.

1 trial.

2 E. The relief sought.

3 F. The party's position on settlement, including present demands and offers and a history
4 of past settlement discussions, offers and demands.

5 **VIII. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**
6 **Trial**

7 Not applicable at this time.

8 **IX. Related Matters Pending**

9 According to the parties, this insurance coverage action arises out of an underlying construction
10 defect action involving several mixed-use buildings in Bakersfield titled C.L. Knox, Inc. dba Advanced
11 Industrial Services et al. v. S.C. Anderson, Inc. et al., Kern Superior Court case number BCV-17-
12 100423, which remains pending and is set for jury trial in April 2021. (Doc. 33 at 2.)

13 **X. Compliance with Federal Procedure**

14 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
15 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
16 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
17 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal
18 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

19 **XI. Effect of this Order**

20 The foregoing order represents the best estimate of the court and counsel as to the agenda most
21 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
22 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
23 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
24 subsequent status conference.

25 **The dates set in this order are firm and will not be modified absent a showing of good**
26 **cause even if the request to modify is made by stipulation. Stipulations extending the deadlines**
27 **contained herein will not be considered unless they are accompanied by affidavits or**
28 **declarations, and where appropriate attached exhibits, which establish good cause for granting**

1 the relief requested.

2 Failure to comply with this order may result in the imposition of sanctions.

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4 IT IS SO ORDERED.

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Dated: October 12, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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